



GENERAL SERVICES ADMINISTRATION

48 CFR Part 532

[GSAR Case 2020-G521; Docket No. GSA-GSAR-2021-0023;

Sequence No. 1]

RIN 3090-AK35

General Services Administration Acquisition Regulation;

Remove OGC Review for Final Payments

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to revise internal agency approval procedures for processing a final payment for construction and building service contracts where, after 60 days, a contracting officer is unable to obtain a release of claims from a contractor.

DATES: Effective: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Tyler Piper or Mr. Stephen Carroll, GSA Acquisition Policy Division, at GSARPolicy@gsa.gov or 817-253-7858, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2020-G521.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the *Federal Register* at 86 FR 20359 on April 19th, 2021, to amend the General Services Administration Regulations (GSAR) to modify GSAR 532.905-70 so it no longer requires contracting officers to obtain approval of legal counsel before processing final payments for construction and building service contracts where, after 60 days, the contracting officer is unable to obtain a release of claims from the contractors. Legal review is not a statutory requirement, and the decision to process final payments in such cases is a business decision, rather than a legal one.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

The proposed rule received one comment. The General Services Administration has reviewed the comment in the development of the final rule. A discussion of the comment and the changes made to the rule as a result of the comment is provided as follows:

A. Summary of Significant Changes

No changes were made between the proposed rule and this final rule.

B. Comments

1. Changes to Oversight

Comment: The respondent expressed concern that removing the Office of General Council (OGC's) oversight over contract closing could potentially invite fraud.

Response: The purpose of OGC review is to provide legal advice and guidance to agency personnel, based on applicable laws, regulations, and policies, consistent with the best interests of the United States. It is not designed as a specific safeguard from fraud. GSA has determined that removal of this particular OGC review will streamline operations without opening a new area of risk of non-compliance with laws, regulations, or policies.

From a fraud mitigation standpoint, the need for separate approval still exists, but it is more appropriately nested within the business operations, not legal counsel.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O.

13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by Office of Management and Budget (OMB) not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a "major rule" under 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

VIII. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part(s) 532

Government procurement.

Jeffrey A. Koses,
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Office of Governmentwide Policy,
General Services Administration.

Therefore, GSA amends 48 CFR part 532 as set forth below:

PART 532—CONTRACT FINANCING

1. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 532.905-70 by—

a. Removing from paragraph (a) the phrase “amount due the Contractor” and adding the phrase “amount due to the contractor” in its place;

b. Revising paragraph (b); and

c. Removing paragraphs (c) and (d).

The revision reads as follows:

532.905-70 Final payment - construction and building service contracts.

* * * * *

(b) A contracting officer may only process the final payment for a construction or building service contract once:

(1) The contractor submits a properly executed GSA Form 1142, Release of Claims; or

(2) The contracting officer documents in the contract file:

(i) That the contracting officer requested a release of claims from the contractor and did not receive a response within 60 calendar days; and

(ii) Approval to process the final payment from one level above the contracting officer.

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